

1 MICHAEL A. SWEET (SBN 184345)  
msweet@foxrothschild.com  
2 JACK PRAETZELLIS (SBN 267765)  
jpraetzellis@foxrothschild.com  
3 NOAH THOMAS (SBN 358134)  
nthomas@foxrothschild.com  
4 **FOX ROTHSCHILD LLP**  
345 California Street, Suite 2200  
5 San Francisco, California 94104  
Telephone: (415) 364-5540  
6 Facsimile: (415) 391-4436

7 *Attorneys for Creditor Anvil Builders*

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SANTA ROSA DIVISION  
11

12 In re:  
13 Kingsborough Atlas Tree Surgery, Inc.,  
14 Debtor  
15

Case No. 25-10088

Chapter 11

**SUPPLEMENTAL OBJECTION OF  
ANVIL BUILDERS TO SALE  
MOTIONS [DOCKET NOS. 95, 97, 110  
AND 112]**

16  
17  
18 Creditor Anvil Builders (“Anvil”) hereby submits this Supplemental Objection to the  
19 Debtor’s Sale Motions at Docket Nos. 95, 97, 110, and 112 (the “Sale Motions”) that seek authority  
20 to sell a customer list and various items of equipment.

21 **I. BACKGROUND**

22 During a status conference on May 14, 2025, the Bankruptcy Court allowed the Debtor to  
23 submit supplemental evidence in support of the Sale Motions, which it did. Docket Nos. 132-134.  
24 Anvil thought the supplemental evidence was supposed to respond to its objections. *See* Docket  
25 Nos. 114-116, 119-120. It doesn’t. The Debtor’s supplemental evidence, if anything, indicates  
26 these sales should not be approved. The evidence fails to address serious concerns about self-  
27 dealing and shows the Debtor did nothing in advance to make sure these sales made sense. Rather  
28 than addressing the underlying issues with the Sale Motions, the Debtor’s supplemental evidence

1 raises new issues with its proposed sales.

2 **II. GOVERNING LAW**

3 Bankruptcy Code § 363(b) authorizes the non-ordinary course sale of property of the estate  
4 following notice and a hearing. “In any sale of estate assets, the ultimate purpose is to obtain the  
5 highest price for the property sold.” *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr.  
6 C.D. Cal. 1991). “In approving any sale outside the ordinary course of business, the court must not  
7 only articulate a sufficient business reason for the sale, it must further find it is in the best interest  
8 of the estate, i.e. it is fair and reasonable, that it has been given adequate marketing, that it has been  
9 negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that it is  
10 an “arms-length” transaction.” *Id.*

11 **III. ARGUMENT**

12 **A. Customer List: Ownership**

13 Debtor insider Mr. Richard Kingsborough writes in his supplemental declaration that “In  
14 June of 2023, the Debtor entered an Asset Purchase Agreement with Anvil Builders wherein the  
15 Debtor agreed to sell its entire business, commercial and residential tree service, to Anvil Builders.”  
16 Docket No. 132 at 1:19-21. In other words, the Debtor sold its entire business to Anvil, including  
17 its residential business. So, Mr. Kingsborough has admitted that the Debtor sold the customer list  
18 at issue to Anvil. And yet, in the same breath, he attempts to have the Debtor sell it again.

19 Anvil continues to believe that ownership of the customer list should be addressed in state  
20 court. However, now that the Debtor has put in evidence that it does not own the customer list,  
21 Anvil does not see how the Bankruptcy Court can approve its sale.

22 **B. Customer List / Equipment: Insider Transaction**

23 The supplemental declarations also fail to address the insider nature of some of these  
24 transactions. Davey Tree Expert Company (“Davey”), the proposed buyer for certain equipment  
25 and the customer list, currently employs Mr. Kingsborough (and his child). *See* Docket No. 132.  
26 Yet, the first time the Debtor mentioned that fact was 7 days ago. The Debtor proposes to sell its  
27 assets to the employer of its insiders and the first time the Debtor mentioned this connection is over  
28 a month after the sale motion was filed. The Debtor’s supplemental evidence makes no effort to

1 explain *why* the Debtor waited to disclose this fact and offers no self-dealing guardrails.

2 The Debtor's supplemental declarations provide no details about the terms of the sales  
3 transaction with any of the buyers (Davey or otherwise). Was there diligence? Representations?  
4 Indemnities? A contract? Are the insiders receiving a commission? The failure to provide details  
5 cuts against this transaction in two ways. *First*, we cannot evaluate if the Estate has protected itself  
6 from claims relating to the sales. And, because the sales proposed are Bankruptcy Code § 363(b)  
7 sales and not free and clear sales *and* lienholder creditors, any assets sold will be sold subject to  
8 whatever liens exist (see *infra* Section D). What happens once a valid lienholder begins an Article  
9 9 foreclosure against its collateral that was "sold" to a buyer . . . will the buyer have a claim against  
10 the Debtor, a right to its money back, something else? *Second*, we still have no idea if this  
11 transaction is moving forward because it is a reasonable deal for the Debtor or if it is simply  
12 designed to enrich the Debtor's insiders. And, if approved as is, we will never know.

### 13 **C. Customer List: Sale Price**

14 The Debtor attempts to retrospectively support its pricing for the customer list. Not by  
15 providing an industry expert. Not by showing significant (or even any) pre-sale efforts to market  
16 the customer list. Instead, by cold mailing a "notice of the opportunity to purchase" the customer  
17 list to "the largest tree service companies in Northern California" a month after filing the motion.<sup>1</sup>  
18 Docket No. 132 at 2:7-9. From the record it does not even look like the Debtor identified the  
19 potential purchasers that were to be given this notice (and instead the Debtor relied on its  
20 bankruptcy lawyer to identify the purported potential buyers).

21 And what exactly was disclosed in this notice? Nearly nothing. It doesn't say how many  
22 customers are on the list. How many of them are repeat buyers. How the list was generated. How  
23 the leads were developed. Instead, the notice says it's a "customer list, consisting primarily of  
24 residential customers that has been developed by the Debtor since the company started operating  
25 in 1982." Docket No. 133 at 2:17-19. That, and it costs \$200,000.

26 It's hard to imagine a less effective marketing strategy for this list than the Debtor employed

---

27  
28 <sup>1</sup> Moreover, if a potential buyer went and viewed the sale motion Docket No. 95, it would have  
seen that the motion is *not* framed as subject to overbid or an auction.

1 here. Coupled with the concerns raised above with respect to the inside nature of this transaction,  
2 one is left to wonder why the Debtor disclosed so little and put so little effort into marketing this  
3 purported asset.

4 **D. Equipment: Anvil's Lien**

5 The Debtor did not address Anvil's lien on all the equipment that the Debtor seeks to sell.  
6 As set forth in Anvil's prior Objections, Anvil holds a valid UCC-1 recorded security interest  
7 against all assets of the Debtor, securing a debt in the amount of not less than \$4.6 million. The  
8 Debtor, in its moving papers, states that the senior lien creditor, Commercial Credit Group ("CCG")  
9 consents to the sale of this equipment. Notwithstanding that consent, the Debtor cannot sell free  
10 and clear of Anvil's lien without addressing any of the criteria for selling free and clear as set forth  
11 in § 363(f) of the Bankruptcy Code.

12 The Debtor has made no showing and has not even attempted to address any of the issues  
13 with respect to Anvil's lien. The Debtor merely states that it will turn over proceeds to CCG. That  
14 does not address Anvil's lien nor the effect on the buyer of the equipment that will still be subject  
15 to Anvil's lien. This is a problem for the Debtor when we consider what happens after the sale,  
16 when the automatic stay does not apply to the equipment, Anvil can exercise its state law remedies,  
17 and the buyer turns around and brings a claim against the Estate.

18 **E. Equipment: Sale Price**

19 The Debtor submitted the Declaration of Todd Eisenhauer to support the pricing of  
20 unspecified equipment to be sold. Mr. Eisenhauer is the spouse of a former employee of the Debtor  
21 who is now employed by Davey (who managed to misspell his own last name in his declaration).  
22 Docket No. 134. The Debtor's evidence of value comes from a place of obvious bias. Beyond that,  
23 there is no evidence that Mr. Eisenhauer was involved in setting or negotiating the actual prices  
24 that the Debtor proposes to sell the equipment for. And, Mr. Eisenhauer's Declaration *does not*  
25 even specify what equipment he is talking about.

26 I have been involved with the purchase and sale of heavy equipment for the  
27 past 35 years through TDE Equipment, Inc., a California Corporation formed by me  
28 on January 30, 2014. I have also been buying and selling equipment used in the tree  
care business for the Debtor for more than 20 years. I am married to Jamie Eisenhaur  
[sic] who was a long term employee of the Debtor and who now works for Davey

1 Tree Expert Company.

2 The starting point for determining the sale price for the equipment to be sold  
3 by the Debtor was an appraisal of all of the equipment that was started in late 2022  
4 that was finished in June of 2023. I considered the wear and tear of the equipment  
5 over the last two years and how the depreciation of the equipment affected the value.  
6 I also looked at what similar equipment was available on the market by going to web  
7 sites such as Machinery Trader and Truck Trader, and looked at the results of  
8 auction sales at Ritchie Bros. I spoke with the dealers who sold the equipment to the  
9 Debtor and people I have known in the industry during the thirty-five years I have  
10 been in the business.

11 In my opinion, the price at which the Debtor is selling the equipment is the  
12 market value of the equipment that is more than what might be obtained at an auction  
13 sale.

14 Docket No. 134. Assuming Mr. Eisenhower's Declaration were given credence, which it should  
15 not be, it is impossible to know whether or not the price is right, or even in the range, without  
16 knowing what equipment Mr. Eisenhower is purportedly talking about.

17 Getting into the details, Mr. Eisenhower's Declaration does not say that the price is within  
18 the ballpark. Instead he offers a vague and confusing opinion: "In my opinion, the price at which  
19 the Debtor is selling the equipment is the market value of the equipment that is more than what  
20 might be obtained at an auction sale." *Id.* Does this mean that the sale price is the market value?  
21 Or is it simply the price the Debtor claims to have found a buyer willing to pay? Or that an auction  
22 would generate less? Or something else entirely?

23 After the fact, the Debtor had the husband of an employee of a buyer vaguely justify a sale  
24 price for some unspecified pieces of the Debtor's equipment. That evidence should be given no  
25 weight.

#### 26 **IV. CONCLUSION**

27 The Debtor had an opportunity to prove its proposed sales met the standard required by  
28 Bankruptcy Code § 363(b), e.g., that the price was reasonable, the property was marketed, the  
transaction was negotiated at an arm's length. The Debtor did not take advantage of that  
opportunity. The evidence submitted fails to demonstrate that these sales are approvable under §  
363(b). Accordingly, Anvil respectfully requests the Court deny the motions.

///

///

1 Dated: May 27, 2025

**FOX ROTHSCHILD LLP**

2

3

/s/ Jack Praetzellis

4

Michael A. Sweet

5

Jack Praetzellis

6

Noah Thomas

7

Attorneys for Creditor

8

Anvil Builders

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **PROOF OF SERVICE OF DOCUMENT**

2 I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business  
3 address is 10250 Constellation Boulevard, Suite 900, Los Angeles, CA 90067.

4 A true and correct copy of the foregoing documents entitled: SUPPLEMENTAL OBJECTION OF ANVIL  
5 BUILDERS TO SALE MOTIONS [DOCKET NOS. 95, 97, 110 AND 112] will be served or was served  
6 (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner  
7 stated below:

8 **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant  
9 to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and  
10 hyperlink to the document. On 5/27/25, I checked the CM/ECF docket for this bankruptcy case or adversary  
11 proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF  
12 transmission at the email addresses stated below:

- 13 • Jamie P. Dreher jdreher@downeybrand.com
- 14 • Michael C. Fallon fallonmc@fallonlaw.net, manders@fallonlaw.net
- 15 • Michael C. Fallon mcfallon@fallonlaw.net, manders@fallonlaw.net
- 16 • Alan W Forsley alan.forsley@flpllp.com
- 17 • Gabriel P Herrera gherrera@kmtg.com, bxiong@kmtg.com
- 18 • Paul Gregory Leahy Paul.Leahy@usdoj.gov
- 19 • Matthew P. Minser mminser@sjlawcorp.com
- 20 • Office of the U.S. Trustee / SR USTPRegion17.SF.ECF@usdoj.gov
- 21 • Jack Praetzellis jpraetzellis@foxrothschild.com, jack-praetzellis-1683@ecf.pacerpro.com
- 22 • Michael A. Sweet msweet@foxrothschild.com, michael-sweet-6337@ecf.pacerpro.com
- 23 • Philip J. Terry pjterry@cmprlaw.com, dhayes@cmprlaw.com
- 24 • Jennifer C. Wong bknotice@mccarthyholthus.com, jwong@ecf.courtdrive.com

25 **2. SERVED BY UNITED STATES MAIL:** On N/A, I served the following persons and/or entities at  
26 the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy  
27 thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.  
28 *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24  
hours after the document is filed.*

29 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION**  
30 **OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling  
31 LBR, on N/A, I served the following persons and/or entities by personal delivery, overnight mail service, or  
32 (for those who consented in writing to such service method), by facsimile transmission and/or email as  
33 follows. *Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the  
judge will be completed no later than 24 hours after the document is filed.*

34 I declare under penalty of perjury under the laws of the United States that the foregoing is true and  
35 correct.

36 5/27/2025

37 Kimberly Hoang

38 /s/ Kimberly Hoang

39 Date

40 Printed Name

41 Signature